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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

12 **MICHAEL ANTHONY FORTNER**

13 **Registered Nursing License Applicant**
14

Case No. *2013-736*

STATEMENT OF ISSUES

15
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
19 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
20 Consumer Affairs.

21 2. On or about June 26, 2012, the Board of Registered Nursing, Department of
22 Consumer Affairs received an application for a Registered Nursing License from Michael
23 Anthony Fortner (Applicant). On or about June 25, 2012, Michael Anthony Fortner certified
24 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
25 application. The Board denied the application on September 17, 2012.

26 **JURISDICTION**

27 3. This Statement of Issues is brought before the Board of Registered Nursing (Board),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a
3 license when it finds that the applicant has committed any acts constituting grounds for denial of
4 licensure under section 480 of that code.

5 STATUTORY PROVISIONS

6 5. Section 2761 of the Code states:

7 "The board may take disciplinary action against a certified or licensed nurse or deny an
8 application for a certificate or license for any of the following:

9 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

10 . . .

11 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
12 functions, and duties of a registered nurse, in which event the record of the conviction shall be
13 conclusive evidence thereof.

14 . . ."

15 6. Section 2762 of the Code states:

16 "In addition to other acts constituting unprofessional conduct within the meaning of this
17 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
18 chapter to do any of the following:

19 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
20 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
21 administer to another, any controlled substance as defined in Division 10 (commencing with
22 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
23 defined in Section 4022.

24 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
25 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
26 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
27 himself or herself, any other person, or the public or to the extent that such use impairs his or her
28 ability to conduct with safety to the public the practice authorized by his or her license.

1 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
2 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
3 or the possession of, or falsification of a record pertaining to, the substances described in
4 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
5 thereof.

6 "(d) Be committed or confined by a court of competent jurisdiction for intemperate use of
7 or addiction to the use of any of the substances described in subdivisions (a) and (b) of this
8 section, in which event the court order of commitment or confinement is prima facie evidence of
9 such commitment or confinement.

10 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any
11 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this
12 section."

13 7. Section 480 of the Business and Professions Code provides:

14 (a) A board may deny a license regulated by this code on the grounds that the applicant
15 has one of the following:

16 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
17 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
18 board is permitted to take following the establishment of a conviction may be taken when the
19 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
20 an order granting probation is made suspending the imposition of sentence, irrespective of a
21 subsequent order under the provisions of Section 1203.4 of the Penal Code.

22 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
23 benefit himself or herself or another, or substantially injure another.

24 "(3)(A) Done any act that if done by a licensee of the business or profession in question,
25 would be grounds for suspension or revocation of license.

26 "(B) The board may deny a license pursuant to this subdivision only if the crime or act is
27 substantially related to the qualifications, functions, or duties of the business or profession for
28 which application is made.

1 “(b) Notwithstanding any other provision of this code, no person shall be denied a license
2 solely on the basis that he or she has been convicted of a felony if he or she has obtained a
3 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
4 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
5 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
6 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
7 Section 482.

8 “(c) A board may deny a license regulated by this code on the ground that the applicant
9 knowingly made a false statement of fact required to be revealed in the application for the
10 license.”

11 FIRST CAUSE FOR DENIAL OF APPLICATION

12 (CRIMINAL CONVICTIONS)

13 8. Applicant is subject to disciplinary action under sections 2761(f) and/or 480 in that on
14 or about September 29, 2008, in a criminal proceeding entitled *The People of the State of*
15 *California v. Michael Anthony Fortner* in Contra Costa County Superior Court, Case Number 01-
16 138848-7 01, Applicant was convicted by his plea of guilty of violating Vehicle Code section
17 23152(a) (driving while under the influence of alcohol). Applicant was sentenced to two days jail
18 time and probation for three years, and ordered to pay fines in the amount of \$1,651.00. The
19 circumstances of the conviction are that on May 21, 2008, Applicant was arrested for driving
20 without headlights at 1:26 a.m. at the intersection of LaCassie Avenue and North Main Street in
21 Walnut Creek, California. Applicant failed field sobriety tests, and his blood alcohol measured
22 .18%, .19% and .20%.

23 9. Applicant is further subject to disciplinary action under sections 2761(f) and/or 480 in
24 that on or about May 27, 2009, in a proceeding entitled *In the Matter Between Contra Costa*
25 *County and Michael Fortner* in Contra Costa County Superior Court, Case Number 093406,
26 Applicant was found guilty of violating Penal Code section 647(f) (disturbing the peace – drug or
27 alcohol related). Applicant was fined in the amount of \$570.00 and ordered to attend one
28

1 Alcoholics Anonymous meeting. The circumstances are that on February 14, 2009, Applicant
2 was arrested for being drunk in public at a dance club in Walnut Creek, California.

3 SECOND CAUSE FOR DENIAL OF APPLICATION

4 (ALCOHOL RELATED CRIMINAL CONVICTIONS)

5 10. Applicant is subject to disciplinary action under sections 2762(c)
6 and/or 480 in that on or about September 29, 2008, in a criminal proceeding entitled *The People*
7 *of the State of California v. Michael Anthony Fortner* in Contra Costa County Superior Court,
8 Case Number 01-138848-7 01, Applicant was convicted by his plea of guilty of violating Vehicle
9 Code section 23152(a) (driving while under the influence of alcohol). Applicant was sentenced to
10 two days jail time and probation for three years, and ordered to pay fines in the amount of
11 \$1,651.00. The circumstances of the conviction are that on May 21, 2008, Applicant was arrested
12 for driving without headlights at 1:26 a.m. at the intersection of LaCassie Avenue and North Main
13 Street in Walnut Creek, California. Applicant failed field sobriety tests, and his blood alcohol
14 measured .18%, .19% and .20%.

15 11. Applicant is further subject to disciplinary action under sections 2762(c) and/or 480
16 in that on or about May 27, 2009, in a proceeding entitled *In the Matter Between Contra Costa*
17 *County and Michael Fortner* in Contra Costa County Superior Court, Case Number 093406,
18 Applicant was found guilty of violating Penal Code section 647(f) (disturbing the peace – drug or
19 alcohol related). Applicant was fined in the amount of \$570.00 and ordered to attend one
20 Alcoholics Anonymous meeting. The circumstances are that on February 14, 2009, Applicant
21 was arrested for being drunk in public at a dance club in Walnut Creek, California.

22 THIRD CAUSE FOR DENIAL OF APPLICATION

23 (USING ALCOHOL IN A MANNER DANGEROUS TO SELF OR OTHERS)

24 12. Applicant is subject to disciplinary action under sections 2762(b) in that he used
25 alcohol in a manner dangerous to himself or others, as described above in paragraphs 8 through
26 11.

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